"Departmental Enquiries Bill" as originally introduced into the Council.

REGULATION OF 106 .

Whereas it is expedient to empower the officers conducting enquiries into the conduct of public servants to summon witnesses and administer oaths, We are hereby pleased to enact as follows :—

1. This Regulation shall come into force on the

2. Any officer, holding a final or preliminary departmental enquiry into the conduct of any public servant under the authority of general or special orders of Our Government, may summon any person residing within Our territories to appear before him and give evidence or to produce, or cause to be produced, any document in his possession or under his control, during such enquiry.

Provided that persons exempted from personal appearance in Civil Courts and women, who, according to the usages of the country, do not appear in public, shall not be required to attend before such officer at his office or at any public place.

3. Every summons issued under this Regulation shall be in writing, duplicate signed and sealed by the officer holding or authorized to hold the enquiry. Such summons shall be served by a Police officer or by such other public servant as the officer holding the enquiry may direct.

4. The provisions of Sections 50, 51, 52, 53 and 54 of the Code of Criminal Procedure (Regulation V of 1067) shall apply to the service of summons issued under this Regulation.

5. All witnesses in departmental enquiries shall be examined on oath or solemn affirmation in the manner prescribed for witnesses in Criminal Courts.

6. The public servant whose conduct is under enquiry may, at his request, be examined on oath or solemn affirmation.

7. When two or more officers are appointed to hold a departmental enquiry into the conduct of any public servant, they may jointly or severally exercise all the powers conferred on a single officer under the preceding Sections.

8. Whoever intentionally prevents the service of the summons issued, or disobeys a summons duly served upon him under this Regulation; or refuses, without lawful excuse, to answer questions put to him in any departmental enquiry; or gives false evidence or makes any false statement on oath in such enquiry, shall, on conviction before a Criminal Court, be liable to the penalties respectively prescribed in Sections 174, 175, 179 and 181 of the Penal Code.

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Officers holding departmental enquiries into the conduct of their subordinates experience great difficulty in enforcing the attendance of witnesses and production of documents for want of legal sanction to their summons. The Superintendent of Police prominently brought to the notice of Government the inconvenience he felt in conducting such enquiries; owing to the failure of witnesses to attend before him and give evidence. No disobedience to summons can be legally punished unless the officer issuing it is empowered by law to issue it.

As the departmental enquiries are conducted under the authority of general or special executive orders, the officers conducting such enquiries are not competent to administer oath to the witnesses examined before them. In the absence of an oath duly administered, no witness can be legally punished for perjury. Considering the magnitude of interests often at stake in departmental enquiries, it is nothing but right to empower these officers to administer oaths to witnesses examined by them.

The main objects of the Bill are (1) to compel the attendance of witnesses and procure documentary evidence in departmental enquiries and (2) to secure true evidence by making the persons examined give their testimony under religious and legal sanctions. Sections 2 and 5 contain the necessary provisions on these points. Sections 3 and 4 lay down the procedure to be observed in the service of the summons. The departmental enquiries being purely official, the proper agency to serve processes issued under this Regulation seems to be the Police. The officer conducting the enquiries is also empowered to employ at his discretion other official agencies for the purpose. If he happens to have a staff of peons attached to his office, he may often find it convenient to entrust the service to one of his subordinates.

The provisions of Section 6 may, at first sight, appear novel, as they seem to violate the well-established principle of criminal jurisprudence that no accused person should be required to swear to the truth of his defence. The position of a public servant accused of misconduct which, in many cases, does not amount to an offence punishable under the criminal law, is analogous to that of a defendant in a civil suit in which both parties are allowed by law to support their cases by their oath. To treat a public servant, whose conduct is under departmental enquiry, *as a criminal*, is impolitic. Moreover, the Section as drafted in the Bill leaves it *entirely to the option* of such servant to give his statement *on oath*. There may be cases in which his oath may carry more weight with the trying officer than the oath of a host of witnesses. If he avails himself of the option, he becomes liable to the punishment prescribed by Section 181 of the Penal Code in case he makes a false statement; but not otherwise.

Section 7 is merely formal and requires no explanation.

Section 8 prescribes the penalties for the breaches of the obligations which the Bill seeks to impose on witnesses.

K. KRISHNASWAMY RAO.

3rd March 1893.

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